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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/990,832	11/16/2001	Andrew Howard Baker	9013.22	3015

20792 7590 08/01/2003

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EXAMINER

KAM, CHIH MIN

ART UNIT	PAPER NUMBER
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1653

DATE MAILED: 08/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/990,832	BAKER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Chih-Min Kam	1653	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-43 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). ____.  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____. | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U. S. C. 121:

I. Claims 1-18, 28-34 and 38, drawn to a targeting peptide; a kit comprising the targeting peptide; a pharmaceutical composition comprising a targeting peptide in association with a vehicle, wherein the vehicle carrying a pharmaceutically active agent such as a drug, a peptide or a polynucleotide; or, a gene therapy vector comprising a targeting peptide, a vehicle associated with the targeting peptide, and a nucleotide sequence, classified in class 514, subclass 2, class 536, subclass 23.1, and class 435, subclasses 320.1.

II. Claims 19-27, drawn to a method for targeting a material to a cell, comprising bringing into association a targeting peptide with the material to be targeted to form a complex, classified in class 514, subclass 2, and class 530, subclass 350.

III. Claims 35-37, drawn to a method for screening targeting peptides capable of binding to an endothelial cell by expressing the targeting peptide, screening with the expressed peptides using non-endothelial cells, and selecting the expressed peptides which display selective binding to the endothelial cells, classified in class 514, subclass 2, and class 435, subclass 69.1.

IV. Claims 39-43, drawn to a method for treating a disease, comprising administering a pharmaceutical agent in association with a targeting peptide, classified in class 514, subclass 2, and class 530, subclass 350.

Should Group I be elected, applicant is required to select one targeting peptide identified by "SEQ ID NO" from claims 1-4, 8-11 and 28-31, one material targeted to a cell from claim 7, one pharmaceutically active agent from claims 13 and 38, and one molecular group from claim 34. Any targeting peptide is considered, absent factual data to the contrary, a distinct peptide. Each material targeted to a cell, each pharmaceutically active agent or, each molecular group is a different chemical entity and has different chemical and physical properties as well as different function, thus each material, each active agent or each molecular group is patentably distinct. This is not a species election.

Should Group II be elected, applicant is required to select one targeting peptide identified by "SEQ ID NO" from claims 19-22. Any targeting peptide is considered, absent factual data to the contrary, a distinct peptide. This is not a species election.

Should Group IV be elected, applicant is required to select one targeting peptide identified by "SEQ ID NO" from claims 39-42. Any targeting peptide is considered, absent factual data to the contrary, a distinct peptide. This is not a species election.

2. The inventions are distinct, each from the other because of the following reasons:

The product of Invention I and the methods of Inventions II, III and IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case, the methods of Inventions II, III and IV are alternative processes of the use of the product of Invention I.

The methods of Inventions II, III and IV are distinct from each other because all three methods have different method steps, use different material in the process, and produce different results.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their recognized divergent subject matter and different classification, and because Inventions I-IV require different searches but are not co-extensive, examination of these distinct inventions would pose a serious burden on the examiner and therefore restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement is traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

A telephone call was made to Kenneth Sibley on July 30, 2003 to request an oral election to the above restriction requirement, but did not result in an election being made.

Art Unit: 1653

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chih-Min Kam whose telephone number is (703) 308-9437. The examiner can normally be reached on 8.00-4:30, Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low can be reached on (703) 308-2923. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-0294 for regular communications and (703) 308-4227 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Chih-Min Kam, Ph. D. *CMK*  
Patent Examiner

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July 30, 2003

*Christopher S. F. Low*  
**CHRISTOPHER S. F. LOW**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 1600**